REMARKS

Applicant appreciates the Examiner's professional courtesy in reissuing this office action as it had mistakenly been sent to previous counsel, rather than to this law firm. Applicant also appreciates Mr. Count's time to take the action necessary to re-start the clock on responding to this action. It is Applicant's understanding that when the Power of Attorney was filed by this law firm with the USPTO on October 19, 2005, the correspondence address for the application was not changed. As such, when the office action was first mailed to previous counsel on April 6, 2006, it mistakenly went to previous counsel, rather than the current attorney-of-record.

The Examiner has rejected the claims at issue for the reasons of record and requests restriction for two species. Such request pertains to the following two groups of claims:

1. Group I claims: 1-15, 32-34 and 38 drawn to a lipid phosphatase assay method, classified in class 435, subclass 7.1
2. Group II claims 16-31, 35-37, and 39 drawn to a kit, classified in class 435, subclass 975.

Applicants hereby provisionally elect Group I claims directed to a lipid phosphatase assay method. The claims readable on this election include claims 1-15, 32-34 and 38. Such election has been made with traverse and without prejudice or disclaimer of Applicant's right to traverse similar restrictions in future applications.

Applicant respectfully asserts that the restriction requirement is improper. The Examiner appears to wholly rely on the "distinct" prong of the requirement in 35 USC §121 that there be "two or more independent and distinct inventions" claimed in one application before the Director may require restriction. (Emphasis added.) The Examiner has made no contention that the inventions of Group I and Group II are in any way "independent."

The Examiner has said that Group I claims are "drawn to a lipid phosphatase assay method..." and that Group II claims are "drawn to a kit." In furtherance of the unsupported contention of distinctiveness as between the inventions of Group I and Group II, the examiner has stated that, "[i]nventions II and I are related as product and process of use."

Applicants respectfully maintain that the claims of Groups I and II have an underlying close relationship in that certain embodiments of each are related to detecting one or more product lipids. Applicants agree with the Examiner in that Groups I and II are patentability distinct but does not agree that the inventions are distinct under 35 USC §121 requiring restriction. It is hard to imagine how the Groups I and II claims could be more interrelated, intertwined and "non-distinct."

Not only has the Examiner not met his burden of showing that the inventions are independent and distinct, he has not met his second burden of showing that examining all claimed inventions in the application would constitute a serious burden. See MPEP § 803. Nowhere in the remarks offered by the Examiner does it state that examining this application without requiring restriction would constitute a serious burden.

In view of the foregoing, Applicant respectfully request that all restriction requirements be withdrawn upon further consideration. The provisional election of the Group I claims should not be construed as an abandonment of the invention of the nonelected claims of Groups II. Applicant expressly reserves the right to file one or more divisional applications drawn to such nonelected Group.

In view of the above provisional election, an Office Action on the merits is respectfully requested at an early time.

If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

It is believed that no fees are due in this matter; however, if a fee is due the Commissioner is authorized to charge it to deposit account No. 502679.

Respectfully submitted by:

Dated: May 18, 2007

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